

EXHIBIT N

In the Matter Of:

In Re: Pork Antitrust Litigation

DUNCAN BIRCH

March 03, 2022



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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MINNESOTA

3 _____)
4 IN RE:)
5 PORK ANTITRUST LITIGATION) Case No.
6 _____) 0:18-cv-01776-
) JRT-HB
)
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8

9 VIDEOCONFERENCE DEPOSITION OF DUNCAN BIRCH

10 Remote via Zoom

11 Thursday, March 3, 2022

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23 Reported by:

24 RACHEL F. GARD, CSR, RPR, CRR

25 JOB NO. 2022-832737

Duncan Birch
March 03, 2022

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3 March 3, 2022
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9:58 a.m. Eastern

Videotaped deposition of DUNCAN BIRCH,
remote via Zoom, pursuant to notice before
Rachel F. Gard, Certified Shorthand Reporter,
Registered Professional Reporter, Certified
Realtime Reporter.

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1 A P P E A R A N C E S (Via Videoconference):

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4 Plaintiffs

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19 BY: CARL MALMSTROM, ESQ.

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Duncan Birch
March 03, 2022

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1 A P P E A R A N C E S (Via Videoconference):

2 AXINN, VELTROP & HARKRIDER LLP

3 Attorneys for Tyson Defendants

4 90 State House Square

5 Hartford, Connecticut 06103

6 Phone: 860.275.8109

7 Email: jtaylor@axinn.com

8 BY: JAROD G. TAYLOR, ESQ.

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12 ALSO PRESENT:

13 CAYLOB SUAREZ, Videographer/Exhibit technician

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Duncan Birch
March 03, 2022

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1 I N D E X

2 WITNESS PAGE
3 DUNCAN BIRCH

4 Examination by Mr. Taylor 7

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6 E X H I B I T S

7 DEPOSITION EXHIBIT PAGE

8 Exhibit 1 Consumer Indirect Purchaser 29
9 Plaintiffs Fourth Amended
Consolidated Class Action
Complaint

10 Exhibit 2 Consumer Indirect Purchaser 45
11 Plaintiffs' Objections and
Responses to Defendants'
First Set of Interrogatories

13 Exhibit 3 BJ's Wholesale Purchase 71
14 History Report, January 1,
2018 to June 30, 2018

15 Exhibit 4 BJ's Wholesale Purchase 78
16 History Report, June 10,
2017 to December 9, 2017

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1 THE VIDEOGRAPHER: We're on the
2 record on March 3rd, 2022, at 9:58 a.m.
3 Eastern time for the remote deposition of
4 Mr. Duncan Birch in the matter of In Re:
5 Pork Antitrust Litigation.

6 My name is Caylob Suarez, and I am
7 the videographer and document technician on
8 behalf of Lexitas.

9 Will counsel please introduce
10 themselves and the party they represent,
11 beginning with the party noticing this
12 proceeding.

13 MR. TAYLOR: Jarod Taylor, Axinn
14 Veltrop & Harkrider, for the Tyson
15 defendants questioning for all defendants.

16 MR. MALMSTROM: Good morning. Carl
17 Malmstrom, M A L M S T R O M, from Wolf
18 Haldstein Adler Freeman & Herz, LLC, on
19 behalf of Mr. Birch.

20 MR. RISSMAN: Good morning. Josh
21 Rissman, Gustafson Gluek, co-lead counsel
22 for the consumer indirect purchaser
23 plaintiffs.

24 THE VIDEOGRAPHER: Thank you. Will
25 the court reporter please swear in the

1 witness.

2 (Witness sworn.)

3 WHEREUPON:

4 DUNCAN BIRCH,

5 called as a witness herein, having been first

6 duly sworn, was examined and testified as

7 follows:

8 EXAMINATION

9 BY MR. TAYLOR:

10 Q. Good morning, Mr. Birch. As I said
11 a moment ago, my name is Jarod Taylor, and I
12 represent Tyson Foods and two of its
13 subsidiaries you've sued in this case.

14 A. Right.

15 Q. Would you please state your name for
16 the record.

17 A. Duncan Birch.

18 Q. Have you ever gone by any other
19 names or nicknames?

20 A. Negative.

21 Q. Do you understand that you're
22 testifying under oath today?

23 A. Yes.

24 Q. You've sworn to tell the truth just
25 like you would if you were in a courtroom

1 starting in June 2018, right?

2 A. Yes, sir.

3 Q. And you did not purchase any pork
4 products in Maine prior to June 2018; is that
5 correct?

6 A. I have purchased pork products in
7 Maine.

8 Q. Before June 2018?

9 A. Yeah. We've been up here a lot
10 visiting her family.

11 Q. What year was the first time you
12 ever visited Maine?

13 A. I want to say 2013.

14 Q. When you visited family prior to
15 moving to Maine, how long was the longest trip
16 you ever took to Maine?

17 A. I want to say a week, maybe 10 days
18 with the weekends thrown in.

19 Q. And from 2013 to '18, how many times
20 would you -- do you remember that you took a
21 one-week to 10-day trip to Maine?

22 A. It was mainly around the holidays
23 and, I mean, I would say the majority of
24 the years. This was a popular
25 Thanksgiving/Christmas destination for us

1 since we could just drive up.

2 Q. And between 2013 to '18, were those
3 yearly roughly week-long trips your only travel
4 to Maine?

5 A. No. We would do other trips as
6 well.

7 Q. Shorter trips?

8 A. Weekender, something, yes. And then
9 house hunting.

10 Q. Did you go grocery shopping during
11 your trips to Maine from 2013 to '18?

12 A. Yes.

13 Q. Does that mean you personally spent
14 money on groceries during your trips from 2013
15 to 2018?

16 A. I can't recall. I know as we had
17 come up more when we were house hunting, I
18 would contribute more to our expenses incurred
19 by her parents.

20 Q. When did you start house hunting?

21 A. 2017.

22 Q. You cannot testify under oath that
23 you spent your own money on pork products in
24 Maine before June 2018, can you?

25 MR. MALMSTROM: Object to the form

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1 of the question.

2 A. I don't have any direct evidence,
3 but I don't have that information to share.

4 Q. That means you don't remember
5 purchasing pork products with your own money in
6 Maine before 2018, correct?

7 A. Prior to June, I don't have the
8 documentation to it. I know my wife's
9 grandfather is a big fan of bacon, so I
10 probably acquired some bacon for him. But I
11 don't have that evidence to provide to you.

12 Q. Okay. So for this, for these
13 questions, I want to put aside for a moment
14 documentary evidence. That's not what I'm
15 asking about. I'm asking for your testimony
16 based on your memory.

17 Do you remember for a fact under
18 oath that you purchased bacon or other pork
19 products with your own money before June 2018?

20 MR. MALMSTROM: Object to the form
21 of the question. Asked and answered.

22 A. I'll say no.

23 Q. So now I want to talk about from
24 June 2018 to present. Do you understand that?

25 A. Yes, sir.

40

1 Q. Have you purchased pork products in
2 Maine from June 2018 to present?

3 A. Yes, sir.

4 Q. What types?

5 A. Various, well, parts, ribs, loins,
6 chops, sausage, ham, smoked meats, sausage,
7 yes. Breakfast patties, sliced ham.

8 Q. And when you say you purchased those
9 products, that means you personally with your
10 money, correct?

11 A. Yes, sir.

12 Q. So your spouse, for example, you're
13 not including purchases by her in that
14 description?

15 A. These are directly purchased by me
16 with money in our joint account.

17 Q. Can you estimate approximately how
18 much you spent on pork products during that
19 period?

20 MR. MALMSTROM: Object to the form
21 of the question. Vague.

22 A. I'd say several hundred dollars'
23 worth.

24 Q. What are all the types of locations
25 in which you purchased pork products in Maine